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April 5, 1999

VIA CERTIFIED MAIL

F. Andrew Turley, Supervisory Attorney
Central Enforcement Docket
Federal Election Commission
999 East Street, NW
Washington, DC 20463

RE: Ken Calvert for Congress - MUR 4880

Dear Mr. Turley:

This letter responds to your letter of February 17, 1999 concerning the above-referenced MUR. We represent the Ken Calvert for Congress Committee with respect to this MUR and respond to demonstrate that no action should be taken against either the Committee or its Treasurer, C. Varis Smith.

SUMMARY OF RESPONSE

The Ken Calvert for Congress Committee has been caught in a cross fire between two unsuccessful challengers. The allegation that the Ken Calvert for Congress Committee received impermissible in-kind corporate contributions from a retirement resort has no legal or factual basis whatsoever. We therefore request that you dismiss this matter in its entirety.

BACKGROUND

A politically motivated complaint by one unsuccessful primary challenger (MUR 4816) has provoked a response by the other unsuccessful primary challenger. The response contained an aside which unfairly and indirectly targeted the Ken Calvert for Congress Committee and which resulted in this complaint (MUR 4880).

Mr. Sarkis (Joe) Khoury initially complained in MUR 4816 that the Ken Calvert for Congress Committee "created" the candidacy of R.M. (Cook) Barela in order to undermine Mr. Khoury's third attempt to unseat Congressman Calvert. Mr. Barela's response to MUR 4816 certainly shows that he was his own candidate, not a Calvert "puppet". He alleges that Congressman Calvert and Mr. Khoury received "illegal" campaign contributions through a corporate retirement home.

In a letter to you dated November 11, 1998 we explained that the Calvert and Barela campaigns have no relationship. The fact that Mr. Barela now appears to allege that the Calvert and Khoury campaigns conspired to exclude him from events only underscores the political underpinnings of these complaints. We again categorically deny any involvement in illegal activity, commit to cooperating fully with the FEC and respectfully request that you complete your investigations into these matters as expeditiously as possible.

LEGAL AND FACTUAL ANALYSIS

The allegation that the Calvert for Congress Committee received impermissible in-kind corporate contributions from the Olive Grove Retirement Resort has no legal or factual basis.

1. Mr. Barela's Allegations.

Mr. Barela's lengthy and confusing response to the allegations by Mr. Khoury includes a statement that the Ken Calvert for Congress Committee "received in-kind contributions via shared newspaper political advertising costs from the Olive Grove Retirement Resort, a HUD federally funded housing facility." Barela Summary, p. 2. The allegation is briefly discussed later in his submission, where he further states his belief that he was impermissibly excluded from a series of events held at the retirement home. Barela Response, pp. 8-9.

2. Applicable Federal Law.

Corporations and government contractors are generally prohibited from making contributions to federal candidates. 2 U.S.C. section 441b; 18 U.S.C. section 611. Certain expenditures made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate's campaign are considered in-kind contributions to the candidate. 2 U.S.C. section 441a(a)(7)(B)(i). A corporation may offer meeting facilities to a candidate without making an in-kind contribution if it makes the facilities available to any other candidate or political committee upon request. 11 CFR section 114.13.

3. Analysis of Facts.

Exhibit 6 includes the following items relevant to Mr. Barela's allegations as we understand them:

- The text of an announcement which allegedly appeared in The Press-Enterprise, a Riverside newspaper, on April 3, 1998. The announcement, which Mr. Barela calls "political advertising", indicates that four candidates for the 43rd Congressional District, including Congressman Calvert, Mr. Khoury, a Green Party

candidate and a Democratic candidate (but not Mr. Barela) would speak at "Get to Know Your Candidate" events on consecutive Wednesdays at the Olive Grove Retirement Resort;

- An undated copy of a "paid political advertisement" inviting members of the public to see Mr. Khoury speak on Wednesday, April 8, 1998;
- A faxed copy of a "paid political advertisement" inviting members of the public to see Mr. Barela speak at a another Olive Grove Retirement Resort event on Wednesday, May 13, 1998.

Importantly, Exhibit 6 does not include a "paid political advertisement" announcing Congressman Calvert's participation in the speaking series. Moreover, we could find no announcement of the Olive Grove event in the April 3, 1998 edition of The Press-Enterprise.¹ Mr. Barela also states that he never placed the faxed copy of his own advertisement because he would "have to pay more than what the other candidates paid."²

The Calvert campaign has confirmed that it did not pay for an advertisement related to the events at the Olive Grove Retirement Resort.

Furthermore, it is clear that Mr. Barela had an opportunity to appear at the retirement home. Mr. Barela states that he contacted the event coordinator (who no longer works at the facility) in order to complain about being omitted from the first announcement. The event coordinator told him that she had tried to contact him to arrange his participation. She then offered him yet another opportunity to speak, this time at an Olive Grove Retirement Home event on Wednesday, May 13, 1998.³ Mr. Barela

¹ In fact, page B-4, from which Mr. Barela claims to have taken the text, is the "community news" section of the paper which provides a calendar of community events at no cost.

² Confusingly, Mr. Barela simultaneously accuses Congressman Calvert of receiving an in-kind contribution through advertising paid for by the retirement home and (as one of the "other candidates") paying for an advertisement.

³ The event on Wednesday, May 13, 1998 would have occurred during a health fair exactly two weeks after the Democratic candidate appeared during the April "Get to Know Your Candidate" series. According Mr. Barela's submission, he would have had the opportunity to meet and speak with attendees in a manner similar to the other events.

F. Andrew Turley, Supervisory Attorney
April 5, 1999
Page 4

admits that he chose not to attend because "the events were HUD funded."⁴

Finally, Mr. Barela erroneously calls the events "fundraisers," when in fact Congressman Calvert merely spent 10 to 15 minutes shaking hands and talking informally with the 20 or so elderly Olive Grove Retirement Resort patrons in attendance.

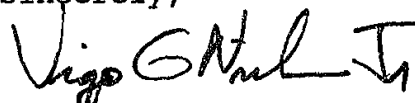
In summary, Mr. Barela has provided absolutely no evidence that either the Calvert campaign or the Olive Grove Retirement Resort paid for a political advertisement related to Congressman Calvert's appearance. Even if everything that Mr. Barela alleges is true, there has been no in-kind contribution to the Calvert campaign. Finally, Mr. Barela admits that he was invited to appear at an event comparable to the events at which other candidates appeared but chose not to attend for reasons that have no relevance to federal law.

CONCLUSION

For the reasons provided in this letter, we therefore request that you dismiss this matter in its entirety. Furthermore, because of what we believe to be the political motives underlying this complaint, we request that this matter remain confidential pursuant to 2 U.S.C. section 437g(a)(12)(A).

Please feel free to contact me directly should you have any further questions.

Sincerely,



Vigo G. Nielsen, Jr.

VGN/JDK/slf
#6805.01

⁴ Apparently, Mr. Barela had the unfounded concern that attending the event would result in an illegal in-kind contribution by a government contractor. However, the retirement home did not violate federal law by offering its facilities to the candidates. See 11 CFR section 114.13.